concludes that approval of the proposed plan would exceed the Department's statutory authority and conflict with the Decision in Docket No. 95-03-01. MCI argues that the Company should not be allowed to circumvent Conn. Gen. Stat. §16-247f through the artifice of a corporate restructuring.

MCI further asserts that under the above circumstances, the Company is effectively barred from implementing its proposed restructuring plan due to its corporate decision to operate under an alternative form of regulation. According to MCI, all of the pricing provisions of the price cap plan presume the offering of retail services by the Company during the entire term of the plan. MCI states that these provisions further incorporate the service reclassification requirements of Conn. Gen. Stat. Section 16-247f, and the Company's reorganization proposal is in direct conflict with these requirements.

Additionally, MCI argues that the Company's proposal conflicts with the underlying basis for development of all existing retail rates. MCI contends that the Company's proposal to split up its telecommunications services and its existing corporate functions destroys the underlying basis for the "going in" rates approved by the Department when adopting its alternative regulation plan and makes the review and monitoring of the Company's earnings virtually impossible. MCI is of the view that functions and costs that were covered by the alternative form of regulation are now proposed to be split up into at least three affiliates: the holding company, the Telco and SAI. MCI states that the Company's proposal conflicts with the existing alternative form of regulation and cannot be approved. MCI also states that this fatal flaw transcends the form of regulation that must apply to SAI because it goes to the very inability of the Company to restructure at the onset of an alternative form of regulation. MCI maintains that such a restructuring squarely conflicts with the earnings monitoring portion of the current form of regulation, as mandated by Conn. Gen. Stat., §16-247k.

MCI contends that approval of the Company proposal will be contrary to the overall objectives of the Act relative to the requirement that the State "utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market...." This goal will be frustrated if the Company can avoid the service reclassification provisions of Conn. Gen. Stat., §16-247f merely by restructuring.

MCI states that the Company's restructuring proposal affords no basis for modifying the form of regulation now in place. MCI also states that this is not a case where the Department may modify the current plan for an alternative form of regulation in accordance with §16-247k(e) of the Conn. Gen. Stat. MCI argues that no modifications can be deemed necessary due to previously unforeseen circumstances. According to MCI, the fundamental inconsistency between the alternative form of regulation under which SNET now operates and its current restructuring proposal does not constitute a "previously unforeseen" circumstance. MCI further states that neither the Company nor the Department have ever indicated that the present case involves the issue of modification of the alternative plan of regulation approved in Docket No. 95-03-01. MCI Brief, pp., 11-17; MCI Reply Brief, p. 9-13.

2. 1996 Federal Act

MCI also argues that the Company's reorganization proposal violates the letter and spirit of the 1996 Federal Act. MCI asserts that the Company is bound by the ILEC obligations contained in the 1996 Federal Act. If the Department approves the proposed plan as filed, MCI contends that SAI must be regulated as an ILEC until it can prove that effective and sustainable competition exists in the local market. MCI also asserts that SAI must be considered a "successor or assign" of the Company and accordingly regulated as an ILEC in order to stimulate such competition in Connecticut.

MCI disagrees with the Company that upon the effective date of the restructuring SAI would not be a successor or assign of the Company and should not be treated as an ILEC. MCI contends that SAI, as proposed, is a successor or assign of the Company and must be considered an ILEC pursuant to §251(h) of the 1996 Federal Act. MCI states that any other interpretation of the statute would result in an essential failure of the goals and obligations of the 1996 Federal Act and the Company should not be allowed to circumvent its obligations under the FTA by restructuring.

MCI cites to the 1996 Federal Act at §251(c)(4)(a) which requires ILECs to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers;" and Section 252(d)(3) that an ILEC's wholesale rates be set on the basis of retail rates charged to subscribers for the telecommunications service requested excluding the portion of that rate that will be avoided through wholesale provisioning. Based on these sections, MCI argues that retail and wholesale prices are linked, thereby preventing price squeezes and encouraging competition. MCI contends that through its proposed corporate restructuring the Company intends to break the linkage between retail and wholesale pricing and essentially evade the resale obligation mandated for ILECs under the 1996 Federal Act. MCI claims that upon approval SAI will be able to offer discounted packages and products to subscribers but would have no corresponding obligation to resell at a discount to competitors, while the Telco would not be obligated to resell the package because it would be provided by SAI. MCI asserts that the Company should not be able to avoid its obligations under the 1996 Federal Act merely by restructuring.

Additionally, MCI asserts that the Company's proposal to break the linkage between wholesale and retail rates violates existing arbitration agreements. MCI contends that if the proposed restructuring is approved and the Company is allowed to sever the link between retail and wholesale rates as of January 1, 1998, the wholesale discount that is contained in MCI's arbitration award would no longer be applicable and the Company's resale obligation would cease to exist. MCI argues that the Company cannot be permitted to avoid its resale obligations under the 1996 Federal Act, regardless of whether the obligations are contained in agreements resulting from arbitration or generic proceedings. MCI Brief, pp. 17-21.

E. NEW ENGLAND CABLE TELEVISION ASSOCIATION, INC. (NECTA)

1. Reorganization Proposal

NECTA opposes the Company's proposed reorganization plan, arguing that it violates the provisions of the 1996 Federal Act and Public Act 94-83 which were designed to protect against use of ILEC monopoly power over local exchange telephone markets and control over bottleneck facilities to hinder competition. NECTA recommends that the Department not accept the Company's attempt to evade these statutes. NECTA also argues that the Company's reorganization proposal violates the pro-competitive policies underlying the state and federal laws. According to NECTA, SNET's noncompliance with both the statutory provisions regulating incumbent LECs and the procedural provisions established in each statute for obtaining relief from the ILEC regulation undercut any claim that the Company's reorganization plan is consistent with the policies underlying the 1996 Federal Act and Public Act 94-83. NECTA also argues that the reorganization plan imposes significant potential harm and cost on consumers, CLEC competitors, and the Department and other public agencies, with few, if any, corresponding benefits to the public. NECTA Brief, pp. 3 and 4.

2. 1996 Federal Act

NECTA asserts that the Company's proposed reorganization plan violates the 1996 Federal Act. NECTA maintains that the Company is subject to the 1996 Federal Act §251(c)(4) obligations, which require the Company to resell all retail services offered to end user customers at a regulated avoided cost discount. NECTA contends that the Company cannot escape this or other ILEC obligations by means of a corporate reorganization. According to NECTA, the 1996 Federal Act defines an incumbent LEC to include any successor or assign, thereby barring ILECs from using a corporate reorganization among related entities to evade ILEC responsibilities. NECTA argues that one or both of these broad, corporate reorganization/transfer concepts must apply to SAI. NECTA also argues that the Company's proposed reorganization is the activity the successor or assigns language was intended to address: a paper transfer among related entities that shifts the ILEC's right to serve a near-ubiquitous customer base to an affiliate while eliminating obligations that protect competitors and the public from the exercise of monopoly power. NECTA asserts that the Department should not second guess Congress' decision to impose asymmetric regulatory burdens on incumbent LECs and other LECs based on relative degrees of market power and control over bottleneck facilities. NECTA Brief, pp. 5-9; NECTA Reply Brief, pp. 2-6.

3. Public Act 94-83

NECTA also contends that the Company's plan violates Public Act 94-83. According to NECTA, that alone provides a separate and independent legal basis for the Department to reject the Company's reorganization proposal. According to NECTA, the Connecticut Legislature deemed all of the Company's telecommunications services as noncompetitive except as otherwise enumerated in the statute. NECTA notes that the classifications for a service may be changed only pursuant to Conn. Gen. Stat. §16-247(f)(c), while under the Company's reorganization all retail local exchange services will automatically become competitive on the effective date of the reorganization.

NECTA claims that the Company has failed to comply with any of the reclassification procedures that it acknowledges are required by the Act. NECTA argues that the Act does not authorize the Company to obtain reclassification of noncompetitive services by merely transferring the service to an unregulated affiliate. NECTA states that to the contrary, Conn. Gen. Stat. §16-247(f) assigns the obligation to reclassify solely to the Department and does not provide for reclassification to occur upon exercise of a company's power to reorganize its affairs. Additionally, NECTA claims that the statute requires the Department to rule on the Company's compliance with the eight statutory factors, an impossibility based on the Company's admitted lack of a petition or materials to support compliance with these factors. NECTA maintains that the Company's failure to make the required filing to support reclassification under Conn. Gen. Stat. §16-247f requires rejection of the Company's reorganization proposal. NECTA Brief, pp. 9-12; NECTA Reply Brief, pp. 6 and 7.

4. Public Policy Concerns

NECTA also states that the Company's proposed reorganization represents poor public policy and should be rejected by the Department even if it is not found to be patently illegal. NECTA claims that the Company has failed to show that its proposal furthers the pro-competitive policies underlying the 1996 Federal Act and Public Act 94-83 or accords with the best interests of Connecticut ratepayers at this time. NECTA asserts that the proposed plan involves unnecessary costs, risk of harm and disadvantage to Connecticut consumers, CLECs and the Department. According to NECTA, the first and potentially most dangerous consequence of granting the Company's proposed reorganization would be to release a company with 95%-plus monopoly control over Connecticut local exchange markets and a 99%-plus share of the residential market from virtually all regulatory constraints. NECTA maintains that SNET possesses the ability to leverage its monopoly control over local exchange service to prevent competitors from offering a competitive bundle, thereby impeding competition.

NECTA also maintains that relieving the Company from its resale obligations eliminates the 1996 Telcom Act's fail-safe protection against anti-competitive behavior directed to facilities-based CLECs. According to NECTA, the Company's reorganization plan focuses on the use of resale and unbundling provisions in §251(c) of the 1996 Federal Act to open up an ILEC's network but ignores the resale obligation. NECTA acknowledges there are actions that a CLEC may take to deter or sanction anti-competitive behavior (i.e., bringing anti-trust complaints to the Department); however, NECTA suggests that the Department hesitate before removing this protection.

NECTA states that approval of the Company's reorganization plan will also require extensive regulatory oversight. NECTA claims that if the Company's plan is approved, procedural safeguards to protect the Company's competitors should be required to be implemented. These include holding the Company to an imputation standard, requiring periodic reports on costing of retail offerings, and requesting the Department to provide "close regulatory attention to anti-trust issues." NECTA Brief, p. 16. According to NECTA, these safeguards will provide limited benefits to an aggrieved

competitor in a fast-changing competitive marketplace.

Additionally, NECTA argues that these safeguards involve high process costs (e.g., the need for CLECs, the Company, the Department and other public agencies to devote resources to fact-intensive regulatory investigations and proceedings). NECTA contends that the Department should not adopt the proposed reorganization plan and thereby avoid imposing these costs and burdens on the public, CLECs and the Department itself. NECTA recommends that the Department also follow the 1996 Federal Act by imposing regulatory restraints on the carriers with the greatest market power.

Further, NECTA argues that approval of the Company's plan will require renegotiation or rearbitration of interconnection agreements with other Connecticut LECs. NECTA states that this would cause uncertainty and delay for all CLECs in seeking to make or adjust their business plans for market entry. NECTA objects to this consequence of the Company's proposed plan. NECTA Brief, pp. 12-18.

5. Public Benefit

NECTA asserts that the proposed plan provides few, if any, benefits to Connecticut ratepayers. NECTA claims that granting regulatory relief to the Company at a time when it maintains a monopoly control over local markets will benefit its shareholders instead of the general public. NECTA also claims that lifting regulatory restraints currently imposed on the Company will not affect CLEC marketing efforts except to make their efforts less successful, drive up relevant costs, deter marginal entrants from joining the fray and, in general, delay the day Connecticut consumers finally will benefit from competition.

NECTA argues that benefits on the Telco side with reorganization are similarly insubstantial. NECTA states that it is not aware of any serious impediments that would prevent the Company from creating or expanding a new business unit and introducing new wholesale products today. NECTA maintains that relieving the Company of its resale obligation is not required because wholesale offerings need not be resold. NECTA concludes that the Company's proposed reorganization plan, if approved, would only provide minimal benefits to Connecticut ratepayers and therefore merits rejection by the Department.

Lastly, NECTA states that even if the Company's ability to compete is harmed by regulatory constraints, no action is appropriate until the Company's market losses are confirmed. In NECTA's view, the Department and the parties to this proceeding need to see whether and to what extent the Company's concerns will be borne out in the marketplace. NECTA claims that this approach fully accords with the interexchange market model. NECTA contends that granting relief now while competition has not yet taken hold is speculative and involves unnecessary risk of harm to the development of competitive telephone markets in Connecticut. NECTA argues that the Company is unlikely to suffer a major loss of market share in a short period. Noting that it has taken over a decade for AT&T's dominant share of the interLATA market to drop by one-third,

NECTA suggests that the Department not act in haste and without data at this state in the development of competition. NECTA Brief, pp. 19-23; NECTA Reply Brief, pp. 7-10

VI. DEPARTMENT ANALYSIS

A. INTRODUCTION

This proceeding represents a continuation of the Department's effort to frame a telecommunications market in which all participants, incumbents and new providers, are afforded a fair opportunity to compete. Over the past three years, profound changes have occurred in state and federal telecommunications policy. As the Department acknowledged even at the beginning of its Public Act 94-83 implementation process, such changes would ultimately require an examination of the organizational constructs of SNET in the new competitive marketplace. The Department purposefully held this proceeding in abeyance until the competition and alternative regulation phases of the Public Act implementation neared completion, so as to permit full consideration of the changes resulting from that implementation and also from the 1996 Federal Act.

In simple terms, this proceeding has afforded SNET an opportunity to propose an organizational and operational structure it deems appropriate for the new telecommunications environment. The Department has reviewed the proposal to determine its impact on the development of broader competition in Connecticut's telecommunications market, its consistency with relevant state and federal laws and regulations, and its impact on the Connecticut public.

Before turning to the specifics of SNET's proposal, a brief historical review of the regulatory treatment of local exchange carrier organizations and operations will add to the understanding of this Decision. This proceeding represents a continuation of the Department's long term commitment to frame a competitive telecommunications market in which all participants, incumbents and challengers, are afforded sufficient opportunity to participate in the evolving information society of the next century. At the time the Department initially authorized this investigation in Docket No. 94-05-26, General Implementation of Public Act 94-83, it envisioned a proceeding where interested parties would be afforded opportunity to critique this Department's historical treatment of SNET's organizational and operational structures in the context of the multi provider market envisioned by Public Act 94-83 and to recommend any changes believed necessary to preserve consumer choice and promote competitive challenges in the market. The Department purposefully held this proceeding in abeyance until this time so as to permit it and the parties an opportunity to fully consider changes approved by the Department in conjunction with implementation of the Act and, subsequently, the 1996 Federal Act in the respective submissions.

This proceeding reflects the Department's need to examine potential consequences of adoption of any financial, structural and/or operational strategies presented by SNET as responses to material changes in state and federal

telecommunications policy.[13] However, the interests of the Department in such strategies is limited to ensuring that such proposals do not impede the development and maintenance of broader market competition and that any increased discretionary authority afforded SNET comports with both state and federal statutes governing telecommunications policy. The Department expressed the opinion in Docket No. 94-05-26 that an objective examination of the organizational constructs and operational conduct of SNET in the new market place envisioned by Public Act 94-83 is critical to the development of competition in Connecticut. Accordingly, the Department set forth provisions in Docket No. 94-05-26 for such an inquiry early in the implementation planning process. Specifically, the Department foresaw needed changes in a number of regulatory policies and practices governing the industry in Connecticut to ensure that strategies, structures and standards employed by the subsidiary business units of SNET comport with the policies and practices adopted by the Department for a competitive market. To that end the Department docketed this proceeding and sought comment from interested parties.

B. REGULATORY CONTEXT

Over the past fifteen years, Congress, the FCC, the United States District Court for the District of Columbia, the Connecticut General Assembly and the Department have pursued policies and actions designed to broaden corporate participation in the segments of the telecommunications market. Collectively, they have sought via legislation, regulation, and adjudication to remove statutory and regulatory barriers that have historically limited the field of choice for the consumer. In so doing, state and federal representatives independently concluded that technological innovation by the telecommunications industry and thematic interdiction by the regulatory community are essential if financial and technological benefits enjoyed by the American public over the past 60 years are to be preserved for future generations.

With the initial introduction of a new competitive framework for the telecommunications industry in 1982, legislators and regulators selectively applied new rules, regulations and reporting responsibilities on LECs to ensure competitive parity among old and new members of the larger telecommunications community.[14] The LECs responded by introducing a series of organizational structures in which financial and operational agreements (generally referred to as affiliate relationships) were employed as a means of restoring some of the lost linkage between various market

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[13] As the corporate parent of a certificated telecommunications provider in Connecticut, SNET is subject to, among other things, requirements previously imposed upon it by the Communications Act of 1934, as amended by the 1996 Federal Act, Public Act 94-83, and the First Report and Order issued by the Federal Communications Commission in CCDocket 96-149 "In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended".

[14] The first formal response by the FCC to the emergence of competition in the American telecommunications market was the Computer II rules issued in 1982 which established structural separation requirements for local exchange carriers that chose to engage in enhanced information services and to-be deregulated telecommunications products/services. The intent of these rules was to provide the LECs reasonable opportunity to engage in price competition while offering competitive entrants reasonable protections against cross-subsidization by the LEC.

segments and technology sectors served by the new subsidiaries of the LEC parent corporation. Issues regarding relationships between commonly-owned subsidiaries (generally referred to as affiliates) have generated debate for over a decade despite extraordinary efforts of both local exchange carrier management and regulators to assure the public of their prudence and propriety.

These facts suggest the presence of a broad strategic architecture dependent upon a set of affiliate business relationships intent on achieving goals that are otherwise denied to the LEC. The proposal made by SNET in this proceeding has expectedly regenerated debate over many of the issues that have marked this subject for over a decade. Yet the Proposal, if adopted, has the potential of reducing the scope and scale of affiliate transactions in contradiction to the general industry trend.

The concern expressed in this proceeding centers less on the number of affiliate relationships employed by the LEC and more on the nature of those relationships. It is a generally accepted principle of management that certain business relationships can be more important than others to the achievement of corporate goals and objectives. For regulated enterprises such as the Telco, it is essential to qualify that principle by noting that the corporate goals and objectives of the Telco must comport with those it is permitted to pursue by provisions of Public Act 94-83 and the 1996 Federal Act. It is the question of comportment and conformance with the prevailing statutory framework governing the telecommunications industry which the Department must address here.

In all of the implementation proceedings associated with Public Act 94-83, the Department has consistently sought to limit the scope and scale of regulatory participation in the state's telecommunications markets to that deemed necessary to protect the interests of the public and ensure fair opportunities for all market participants. In so doing, the Department has repeatedly affirmed its belief that the public is better served by broader competition than by broader regulation. That principle remains the cornerstone of the Department's telecommunications policy framework and is reaffirmed in this proceeding.

It has been suggested by some parties to this proceeding that regulation must be seen as a necessary restraint on the self-interested actions of the incumbent LEC and cannot be reduced without introducing significant risk of corporate abuse. The applicant in this proceeding, however, has argued that the presence of competitors and the increasing availability of product substitutions will serve to contain any excesses associated with its pursuit of business. The question of whether broad regulation is fundamental to market discipline is increasingly more a subject of academic debate and less a foundation principle of this Department's telecommunications policy. The concerted actions of the Connecticut General Assembly, the United States Congress and the Department have purposefully proscribed the Department's role in directing a competitive marketplace and that will not change with the outcome of this proceeding.

Over the years the regulatory community, including the Department at times, sought relative safety in the antitrust views of the early courts which concluded that monopoly's organizational structure was the key to both abuse by corporations of their privileged position and compliance with regulatory dictates. In the view of many jurists

properly defined organizational structures could ensure responsible management action and full public accountability. Conversely, improperly defined organizational structures created the opportunity for misrepresentation and mismanagement, denying the public the full benefits of a free market. In consequence of that view, the identification and implementation of an "acceptable" operational structure which guaranteed active regulatory participation became a top priority in the minds of many in public service.

Critics of the post-divestiture telecommunications industry contend that operational structures which permit unconstrained growth and a broadened scope of business interest pose significant risk to the American public. However, it is important to note for purposes of this proceeding that the broad outline formula of the Modified Final Judgment left many questions of operational control, business definition, and entity relationships purposefully unanswered. Left with only general organizational instructions, management teams responsible for developing the proposed plans of reorganization followed similar paths and pursued common goals. The resulting organizational blueprints simply sought to (1) ensure compliance with the balkanized regulatory requirements of the signed agreement, (2) limit any customer inconvenience created by the events, and (3) minimize the financial and operational dislocations of the change. The planners had not been asked to concern themselves with the broad theoretical constructs of political power and economic containment subsequently raised in proceedings such as this and, accordingly, did not worry about them. Planners in the early 1980's were solely interested in satisfying the immediate needs of their shareowners, their customers and their regulators for a relatively efficient and effective delivery system.

In the decade since, however, regulatory agencies have been presented with questions regarding:

- the need for the complex network of interaffiliate transactions that support the current operational structure;
- the risk and/or benefit attendant to regulated customers by such relationships; and
- the extent of control exercised by management of the regulated units over their affiliate relationships.

This proceeding represents a notable departure from the previous affiliate interest investigation by the Department in Docket No. 89-09-02, DPUC Review of the Audit of the Affiliated Interests of Southern New England Telephone Company, and those undertaken by other state regulatory agencies which sought simply to understand the scope of affiliate transactions involving the Telco and ensuring those transactions were properly conducted, reported and accounted for by the Telco. This proceeding represents the first full-scale examination by the Department of the Telco's organizational structure under the terms and conditions outlined by Public Act 94-83 and the 1996 Federal Act.

C. PLAN OF REORGANIZATION

In this proceeding, the Southern New England Telecommunications Corporation proposes to modify its the organizational structure in order to execute its business strategy. In so doing, SNET represents to the Department that its actions comport with the requirements of the Act, the 1996 Federal Act, and various other Department and FCC directives governing its operations. Specifically, as set forth previously, SNET proposes to:

- separate the retail and wholesale business units that currently reside within the corporate framework of the Southern New England Telephone Company (Telco);
- transfer all of the Telco's retail operations and retail customers to SNET America Inc. (SAI) and discontinue the Telco's retail service offerings;
- empower SAI to offer to all end users on a statewide basis a variety of services, including local services, intrastate services, interstate services, international calling and a number of enhanced services;
- subject SAI to the same state and federal regulatory requirements as are imposed on other CLECs;
- continue to operate the Telco as a telephone company/public service company for purposes of Connecticut law;
- operate the Telco in accord with provisions set forth by the Department in its March 13, 1996 Decision in Docket No. 95-03-01 and as an incumbent local exchange carrier (ILEC) under federal law;
- maintain wholesale service tariffs, priced initially at retail minus avoided cost, for all existing Telco service offerings consistent with current federal pricing standards;
- preserve tariffs for intrastate and interstate access and unbundled network elements previously approved by the Department;
- price new wholesale services offered by the Telco at TSLRIC plus a contribution to SNET's overhead;
- retain ownership and operational control of all distribution plant and core network infrastructure in the Telco, subject to all requirements of state and federal law;
- restrict the business purpose of the Telco to serve the needs of CLECs and other wholesale customers; and
- conduct all business transactions between SAI and the Telco in accordance with Parts 32 and 64 of FCC regulations as amended by the 1996 Federal Act.

SNET maintains that its actions are a necessary response to the "dramatic legislative changes" contained within the 1996 Federal Act that, in its opinion, "essentially prevents ILECs from differentiating their retail services from those of their competitors." Application, p. 3. SNET further asserts that some interpretations by the FCC of the 1996 Federal Act, "clearly secure the competitive viability of the CLECs" by providing them "a competitive edge over ILECs through both pricing and product innovation." Application, p. 4. SNET states that such an advantage is unnecessary to foster competition and unwarranted. According to SNET, the imprimatur of the FCC in

its First Report and Order will severely impede the development and deployment of new telecommunications and information technologies by the ILEC unless its organizational response is adopted by the Department. SNET Reply Brief, pp. 32-35.

D. DEPARTMENT ANALYSIS

The Department set forth in its December 6, 1996, Statement of Scope of the Proceeding (Scope) its intent to ensure that SNET affiliate strategies, structures and standards conform to the governing state and federal rules and regulations. Scope, p. 2. The Department cited in that notification, Public Act 94-83 and the 1996 Federal Act as the statutes that would serve as the foundation for its investigation. Subsequent to issuance of the Scope, on December 24, 1996, the FCC issued the First Report and Order and Further Notice of Proposed Rulemaking in Docket CC 96-149 Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended. The Department has reviewed the issues addressed in that proceeding and has concluded that, even though specific issues resolved in the FCC proceeding are similar to issues presented in this docket, an independent examination of all the relevant affiliate issues presented in this proceeding is necessary in order to fully satisfy the Department's responsibilities under Conn. Gen. Stat. §§ 16-47b, 16-247a and 16-247k. It is the Department's opinion that even though specific issues resolved in the FCC proceeding exhibit some level of similarity with issues presented by various parties for consideration in this docket, the Department must fully examine their relative merits before adopting any final disposition, The Department remains of the opinion that SNET (by virtue of not being a Bell Operating Company) is not subject to the requirements of the FCC Order in that proceeding unless the Department deems compliance essential to protect the public's interest and/or to conform with Public Act 94-83.

The Department has concluded however, that the structural and transactional requirements set forth in §§272(b), 272(c)(a), 272(d)(3), 272(e) and 272(g) of the 1996 Federal Act offer a useful set of standards to guide the Department's investigation of SNET's proposed reorganization. The dictates set forth in those sections are operationally achievable, reasonably sustainable and serve to ensure that any two entities sharing common ownership and/or management do not unfairly benefit from their corporate relationship. The risks and benefits of affiliate relationships do not differ based on the pre-Divestiture relationship of the applicant to the Bell System. Therefore, the Department adopts the Federal Act's standards as the minimum standards to apply to SNET's affiliate relationships.

Accordingly, in the context of SNET's proposed reorganization, SAI must:

- operate independently from the Telco;
- maintain books, records, and accounts in the manner prescribed by the Department and separate from the books, records, and accounts maintained by the Telco;
- have separate officers, directors, and employees from those of the Telco;
- not enter into any credit arrangement which would permit a creditor, upon

default, to have recourse upon the assets of the Telco; and
- conduct all transactions with the Telco on an arm's length basis with all such transactions reduced to writing and available for public inspection.

Furthermore, the Telco must:

- not discriminate between any affiliate business unit of the Telco and any other entity in the provision or procurement of goods, services, facilities, and information or in the establishment of standards;
- account for all transactions with any affiliate business unit in accordance with accounting principles designated or approved by this Department;
- fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;
- not provide any facilities, services, or information concerning its provision of facilities and/or services to any CLEC affiliate entity unless such facilities, services, or information are made available to other CLEC providers in the Connecticut market on the same terms and conditions;
- charge any CLEC affiliate, or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange services and exchange access services that is no less than the amount charged to any unaffiliated CLEC for such service;
- provide any facilities, services, or information concerning its provision of such facilities and/or services to all CLEC providers at the same rates and on the same terms and conditions so long as costs are properly allocated among interested affiliated and nonaffiliated entities; and
- not engage in marketing and/or sales of facilities, services or information offered by any CLEC affiliate as either a fulfillment agent, joint representative or fulfillment.

In this proceeding, the Department committed itself to an exhaustive review of the submissions by the applicant and parties. In so doing, the Department continues to be mindful of a) the gravity represented by the topics raised in this proceeding for consideration; and b) the significance of any decision it renders upon the future development of the telecommunications market in Connecticut. It is also mindful of the importance this proceeding represents to the people of Connecticut who have entrusted the Department to protect their interests in this matter.

This proceeding represents the culmination of the Department's effort to implement the statutory requirements introduced in Public Act 94-83 and the 1996 Federal Act. Though each of these acts represent independent legislative and regulatory initiatives, they share a common commitment to the idea that greater public benefit can be realized with greater competition than with greater regulation. Each of these statutes reflect a firm legislative commitment to the advancement of competition and the acceleration of technological innovation for the future. The Department

concurs with these goals and believes that the evaluative framework it has chosen to employ in this proceeding is consistent with the legislative intent of both acts.

The issues presented to the Department for consideration in this proceeding by all of the interested parties are too numerous to recite individually but can be grouped into two general areas for consideration. Simply stated, the objections and concerns raised by the interested parties in this proceeding coalesce around two principle themes of SNET's proposal, a realignment of organizational structure and a renascent operational strategy that such a structure purportedly affords the Telco. The Department is sensitive to these and has, in the conduct of this proceeding, given serious consideration to the consequences on both of any potential action by this Department. However, the Department is legally charged to ensure that representations and rulings made in this proceeding are consistent with the statutory objectives and regulatory strictures that govern the telecommunications industry. Therefore, the Department must ensure that its actions comport with both the state and federal laws governing the telecommunications industry.

1. Business Unit Separation

By the terms of its reorganization plan, SNET proposes to separate the retail and wholesale telecommunications business functions currently residing within the common corporate framework of the Telco. Participants in this proceeding have generally objected to the proposed segregation of the retail and wholesale market responsibilities, and have presented a variety of arguments. The most common argument asserts that pursuant to the 1996 Federal Act, retail and wholesale market functions are companion responsibilities of an ILEC that cannot be independently performed by an ILEC and a CLEC. According to this argument, any reassignment of responsibilities between the ILEC and CLEC triggers redesignation of the CLEC as an incumbent local exchange carrier under the terms set forth in §251(h)(2) of the 1996 Federal Act and subjects the CLEC to the same regulatory regime as that imposed on an ILEC.

SNET contends that functional separation of its wholesale and retail activities into different business units represents a natural conclusion to the decade-long evolution of process improvements directed at better serving end-user consumers and IXC services' providers. Furthermore, SNET argues that reorganizing retail and wholesale activities into discrete lines of business signifies formal recognition of the differences in service expectations that will emerge in the future between retail end-users and customers of wholesale service.

The Department must determine: 1) whether structural separation is explicitly prescribed or precluded under state and federal statute, and 2) if neither prescribed nor precluded by law, does structural separation of the two activities serve the public's interest in competition?

SNET is a Connecticut chartered holding company that currently supports seven, wholly-owned and fully-separated subsidiary business units engaged in various

segments of the telecommunications, entertainment and information services markets. In addition to the Telco, SNET's corporate family is comprised of SNET America Inc., SNET Cellular, Inc., SNET Credit, Inc., SNET Diversified Group, Inc., SNET Mobility, Inc., SNET Personal Vision, Inc. and SNET Real Estate, Inc. Each of these business units operates independently of one another pursuing a scope of business endeavor defined for it by the SNET corporate business strategy and approved by the SNET Board of Directors and the shareholders they represent.

The Department has reviewed provisions of Public Act 94-83 and the 1996 Federal Act and has found no specific statutory provisions either prescribing or precluding SNET's plan to segregate its retail and wholesale functions into two independently-managed business units. The absence of any consideration of the specific issue in either statute represents an understanding and acceptance of the sufficiency of current state and federal law governing corporate structures to regulate the business affairs of the telecommunications industry as well as the general business community. The Department has, on a number of occasions in the past, stated its general belief that management must be permitted to manage the affairs of its business without undue and unwarranted regulatory involvement. It is only when management has shown itself incapable of effectively managing its affairs that the Department will become involved. In the Department's view, consistent with governing corporate law, any changes in corporate strategy and/or business unit definition are at the sole discretion of the SNET Board of Directors and its management designees. The interest of the Department in either change is limited to ensuring that any proposed change is consistent with state and federal law and does not negatively impact the public's interest.

The Department's experience in regulatory proceedings pertaining to SNET's interexchange carrier services' activities suggests that the functional separation of end-user and IXC service provisioning systems introduced in the mid-1980's have generally proven beneficial for both end-users and IXCs. By specializing its technological and managerial resources to the individual needs of its end-users and IXCs, the Telco has been able to improve LEC provisioning processes for services and facilities to both customer groups. The Department has not been made aware of any substantive problems associated with this strategy and structure. To further reinforce the level of support available to IXCs and CLECs by further specialization at the Telco seems both prudent and proper to the Department.

The Department finds no compelling reason in the evidence presented by the parties in this proceeding to intercede in the proposed corporate realignment of marketing and customer service responsibilities between the Telco and another designated business unit of SNET. In the current proposal, SNET plans to designate another business unit within its corporate family to serve as its retail end-user representative in Connecticut. As the corporate parent of both designated business units, SNET remains ultimately accountable for the actions of both business units, irrespective of the form of regulatory treatment accorded them under the federal and state statutes. Such accountability effectively preserves all current protections afforded by the Department's rules and regulations on the Telco in particular, and SNET in

general.

Participants opposing SNET's proposal, however, argue that in effect the Plan envisions a Southern New England Telephone Company that is exempt from certain ILEC obligations imposed on the Telco by the 1996 Federal Act and the FCC's implementation of that act. Such participants contend that the act was itself designed to prevent any relief from those responsibilities through a sale or restructure of the ILEC business unit. Specifically, the parties argue that the requirement that an ILEC resell their retail services at wholesale rates minus avoidable costs[15] must apply to a CLEC retail unit (in this case SAI), through the operation of § 251(h)(1) of the 1996 Federal Act.

Section 251(h)(1) of the 1996 Federal Act provides that an incumbent local exchange carrier is a local exchange carrier that:

> (A) on the date of enactment of the Act, provided telephone exchange service in such area; and
>
> (B) (i) on such date of enactment, was deemed to be a member of the exchange carrier associate pursuant to section 69.601(b) of the [FCC's] regulations (47 C.F.R. 69.601(b)); or
>
> (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)

Those opposing SNET's reorganization proposal maintain that, through the operation of this section, the incumbent local exchange responsibilities, including the resale at wholesale obligation, pass through to SAI as the successor or assign of the Telco. Such participants further argue that the reasoning applied by the FCC to separate affiliate issues in its First Report and Order in CC Docket No. 96-149, Implementation of Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended (adopted Dec. 23, 1996), should also be applied here. In that First Report and Order, the FCC concluded that:

> a BOC may not transfer local exchange and local exchange access facilities and capabilities to the Section 272 affiliate, or another affiliate, in order to avoid regulatory requirements. . . . We conclude that, if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to Section 251(c)(3), we will deem such entity to be an "assign" of the BOC under section 3(4) of the Act with respect to those network elements.

First Report and Order, ¶ 309.

SNET responds that the "successor or assign" language of the 1996 Federal Act

[15] 1996 Federal Act, §§251(c)(4), 252(d)(3).

requires an analysis of the nature of the assets transferred from the ILEC before any conclusion can be reached. SNET contends that the 1996 Federal Act may require an entity to be considered a successor or assign of the ILEC if that entity succeeds to all of the assets of an ILEC. If, however, only a limited portion of an ILEC's assets are transferred, SNET maintains that the entity does not become an ILEC by virtue of the transaction. Because only retail activities will be transferred to SAI, while the network facilities will remain with the Telco, SNET asserts that there is no justification for the finding that SAI will be a successor or assign of the Telco following the proposed restructure. SNET Brief, pp. 36 and 37.

OCC argues that the Department should view the definition of a successor or assign at least as broadly as the Bell Operating Companies who submitted comments in the FCC's Non-Accounting Safeguards Proceeding. Since the Bell Operating Companies argued in that proceeding that an affiliate should only be a successor or assign if it substantially takes the place of the BOC in the operation of one of the BOC's core businesses (see First Report and Order at ¶303), and since SNET's retail local exchange business is a core business, OCC argues that SAI should be considered a successor or assign of the Telco. OCC Brief, pp. 14 and 15.

In Connecticut, a successor has always been interpreted to constitute another corporation which, by a process of amalgamation, consolidation, or duly authorized legal succession, has become invested with the rights and assumed the burdens of the first corporation. To be a successor, the succeeding corporation should, in all material aspects, "stand in the boots of the old one." D.D.J. Electrical Contractors, Inc. v. Nanfito & Sons Builders, Inc., 40 Conn. Sup. 50, 52 (1984). The Department, therefore, concludes that SNET's proposal, which entails assumption of retail activities by SAI, does not place SAI in the stead of the Telco in all material aspects. The Telco and SAI operated as independent business units of SNET prior to the date of enactment of the 1996 Federal Act and will both continue to operate as business units if the proposed reorganization is approved. Nothing presented by the participants in this proceeding suggests that with approval of the proposed separation of wholesale and retail responsibilities the Telco will relinquish any of the interconnection responsibilities set forth in §251(a), §251(b) or §251(c) of the 1996 Federal Act or those set forth in Conn. Gen. Stat. §16-247b(b). Given that the Telco will continue to retain full ownership and operational responsibility of the public switched network, such responsibilities imposed by Public Act 94-83 and the 1996 Federal Act remain with the Telco. Accordingly, SAI is not a successor organization for purposes of this proceeding and purposes of applying §251(h)(1)(B)(ii) of the 1996 Federal Act and comports with additional provisions set forth in §16-247b(b) of the Conn. Gen. Stat. and §251(b) and §251(c) of the Federal Act.

Further, the Department finds no compelling evidence to suggest that SAI constitutes an "assign" of the Telco warranting regulatory treatment of SAI as an ILEC under §251(h)(1)(B)(ii) of the 1996 Federal Act. The alignment of market responsibilities among business units has been, is, and will remain the managerial responsibility of SNET, even were the Department to adopt the proposed reorganization in toto.

Moreover, the Department does not accept NECTA's argument that the language of §251(h)(1) of the 1996 Federal Act requires SAI to be considered an assign because the Telco will transfer to SAI ownership rights to provide retail services. NECTA Reply Brief at 5. While SNET's reorganization proposal does contemplate a transfer of customers to SAI that might be considered an assignment, the mechanics of the reorganization provides customers the option to affirmatively choose their carrier. Under this scenario, therefore, it is the customers that effect the reassignment of their account to the retail provider of their choice; consequently, the transaction is no more an assignment than any of the millions of PIC selections that have occurred in the interexchange market since the implementation of presubscription.

In conclusion, SAI's assumption of certain service related activities is not sufficient cause to consider it an "assign" or "successor" by terms of the definition set forth in §§251(h)(1)(B)(i) and 251(h)(1)(B)(ii) of the 1996 Federal Act. The Department finds that the structural separation of wholesale and retail market activities by SNET and the consequent realignment of market responsibilities between the Telco and SAI is not precluded by current state or federal law, continues to be a managerial prerogative of the corporate Board of Directors and presents no imminent threat to the development of competition in Connecticut. Therefore, SNET's request for separation of end-user retail and CLEC/IXC wholesale activities into separate business units is approved.

2. Discontinuance of Retail Operations

SNET proposes that the Telco discontinue offering all retail services on January 1, 1998. SNET estimates that such services currently comprise approximately 400 individual tariff offerings employed by residential, commercial, industrial, educational, governmental and medical subscriber groups as well as interexchange carriers, wireless services providers, competitive local exchange carriers, coin-operated telephone operators, alternative operator services providers, alarm service companies, Internet service providers and broadcasters.

The participants in this proceeding opposed to any termination of retail operations by the Telco suggest that an ILEC cannot withdraw from the retail market and remain in compliance with provisions of the federal law which mandates resale and dictates the methods of pricing of ILEC telecommunications services. Specifically, opponents cite §251(c)(4)(A) of the 1996 Federal Act which provides that ILECs have a duty to offer for resale any service currently offered at retail and §252(d)(3) of the 1996 Federal Act which requires a wholesale price to be a function of the equivalent retail rate for the service minus certain avoided costs. Opponents assert that a qualified retail offering must be available to satisfy the requirements set forth for an ILEC in both of these sections. SNET asserts that any Department requirement imposed on the Telco to make available retail service offerings once SAI is empowered to represent it in the retail market is unwarranted under terms of both state and federal law and unnecessary to facilitate competition.

The Department finds little support in the record for the relatively rigid interpretation put forth in this proceeding by opponents of SNET's proposal regarding retail duties and obligations of an ILEC. Opposition to the Telco's discontinuance of retail operations is generally constructed on a rather Byzantine definition of an ILEC referenced in §251(h)(2)of the 1996 Federal Act. In contrast however, the Department has found sufficient evidentiary and statutory support to suggest that selective participation, or non participation, in the retail sector by an ILEC is well within the operational framework afforded SNET by state and federal statutes. Specifically, §251(c)(4)(A) of the 1996 Federal Act serves to limit the universe of resale obligations for an ILEC to only a "telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." This section makes a purposeful distinction between duties and obligations of an ILEC when dealing with qualified telecommunications carriers and those prescribed for dealing with retail subscribers. Unlike the discretionary authority afforded an ILEC in §251(c)(4)(A) of the 1996 Federal Act, to selectively participate in the retail market, federal law, as well as previous Department Decisions, afford an ILEC no discretionary authority in matters related to interconnection with a qualified telecommunications carrier. Requirements of the Telco to negotiate, interconnect and unbundle ILEC network facilities set forth in §251 of the 1996 Federal Act, §16-247b of the Conn. Gen. Stat. and the Department's Decision in Docket No. 94-10-01 remain unquestioned by this Department and the parties in this proceeding.

The Department also finds that an ILEC is under no legal obligation to make generally available any telecommunications technology or network infrastructure at retail unless it deems it to be in its own best interest. Accordingly, the ILEC is free to offer all, some, or none of its capabilities as a retail service offering. However, once a decision is made by the ILEC to offer a particular service or capability on a retail basis, the ILEC then assumes an attendant obligation under the terms of §251(c)(4)(A) of the 1996 Federal Act to make available an equivalent wholesale offering to qualified telecommunications carriers at a wholesale price set in accordance with terms contained in §252(d)(3) of the 1996 Federal Act.

The Department is also of the opinion that §251(c)(4)(A) of the 1996 Federal Act affirms that retail telecommunications services represent only a subset of all telecommunications services and, as such, do not constitute the total universe of telecommunications services that might be offered by an ILEC. Correspondingly, only those telecommunications services which are found within that retail subset are subject to the resale requirements and pricing strictures set forth in §252(d)(3) of the 1996 Federal Act. Accordingly, any commitment to provide a telecommunications service at retail is a discretionary decision by the ILEC. Correspondingly , any decision to not provide a telecommunications service at retail is also the discretionary decision of an ILEC. The complement of services offered at retail (and simultaneously at wholesale) must reflect the strategic interests of the ILEC and the role it envisions for itself in the evolving marketplace.

Moreover, wholesale pricing strictures set forth in the 1996 Federal Act apply exclusively to that subset of telecommunications services which are offered at retail to

subscribers who are not telecommunications carriers. This effectively precludes any requirement for an ILEC to offer a discount on access services and network elements made available to CLECs and IXCs under terms and conditions set forth in §§251 and 252 of the 1996 Federal Act and §16-247 of the Conn. Gen. Stat.

Accordingly, the Department does not object to SNET's proposed withdrawal from the retail market coincident with its proposed reorganization on January 1, 1998. The Department will direct SNET to submit a formal implementation plan for withdrawal no later than September 1, 1997. In so doing, the Department views its actions to simply represent concurrence with a managerial decision and not unwarranted regulatory interdiction in the competitive marketplace. The nature of the proposed action, however, makes it necessary for the Department to qualify its support for SNET's actions and introduce certain conditions. The Department is of the view that withdrawal at the retail level by the Telco must be complete and with no exceptions, if the competitive landscape is to remain level for both incumbents and new entrants. Likewise, the Telco must restrict availability of its wholesale product/service offerings to telecommunications services, access services and network elements to qualified CLECs and IXCs for subsequent reuse and resale to end-users. All current subscribers of special service contracts, custom service arrangements, special assemblies and/or other nontariffed noncompetitive service offerings of the Telco must be released from said obligations. These subscribers shall be released from their obligations coincident with the effective date of the Telco's wholesale tariff and provided an adequate opportunity to negotiate equivalent service commitments from qualified CLECs through June 1, 1998. Previous representations made by SNET to any subscriber must be performed by SAI and constructed upon the appropriate wholesale tariff offerings of the Telco.

With these conditions, the Department accepts the proposed withdrawal of the Telco from the retail market coincident with designation and certification of a CLEC business affiliate as the exclusive retail representative of SNET. The Department's acceptance will, therefore, be contingent upon regulatory approval of a qualified CLEC business unit which is wholly-owned and operated by SNET. Conversely, the Department will not accept the proposed retail withdrawal if SNET is unable to present a qualified CLEC application by the appointed date for withdrawal or subsequently proposes to forego any corporate participation at the retail level either before or after the effective date of withdrawal.

3. Transfer of Retail Customers

SNET proposes to transfer corporate responsibility for all Telco retail customers that do not affirmatively elect a CLEC other than SAI to be their retail service provider to SAI effective January 1, 1998. SNET also proposes to transfer to SAI, coincident with its retail customers, all assets and employees associated with the provisioning of retail telecommunications services. According to SNET, the mass transfer will relieve the Telco of all administrative and operational responsibilities associated with the retail market and permit it to devote full attention to the needs of the CLEC and IXC communities.

Participants in this proceeding have generally expressed opposition to SNET's proposal on the basis that competitors cannot reasonably challenge SAI for the right to serve as the recipient organization for the Telco's retail customers. In their view, SNET's proposal to transfer all of the retail market to SAI constitutes a grossly unfair act and must be rejected as contrary to the intent of both the state and federal statutes. According to these critics, SAI has evidenced no professional qualifications that justify the award of a CPCN yet will be the beneficiary of a gift from the Telco simply on the basis of the common corporate parentage it shares with the Telco.

Moreover, critics of SNET's proposal assert that SAI materially benefits from a set of competitive advantages denied any other prospective contestant. Specifically, such opponents submit that the projected transition costs are understated, control of customer information by the Telco will limit a competitor's ability to market against SAI and pricing flexibility afforded SAI as a CLEC will severely restrict another CLEC's ability to effectively compete. SNET in turn argues that the projected costs to the Telco are reasonably accurate, information available to SAI will be the same as that available to other competitors, and retail pricing policies of SAI will be largely reflective of the wholesale prices charged by the Telco to SAI for unbundled network elements and wholesale telecommunications services. Accordingly, SNET believes that its proposal is fair and equitable to all CLECs.

The Department has carefully considered the points made regarding SAI implementation costs, information and pricing policies and is satisfied that nothing proposed by SNET in these specific areas presents sufficient concern to warrant categorically denying SNET's request to transfer its customer base to SAI. The Department, however, must modify the proposal in certain areas to ensure that neither the public nor the development of competition are negatively impacted by such actions.

The projected costs to SAI of the transition are forward-looking and represent a reasonable facsimile of the efforts involved in implementing any transfer policy approved by the Department. The Department fully recognizes the possibility that implementation costs incurred by the Telco may exceed those proposed in SNET's Response to OCC-2, and must make provision for such possibility in order to protect the interests of both the retail and wholesale customers of the Telco. Therefore, the Department will require that all financial liability for the implementation costs incurred by the Telco be assumed by SAI, irrespective of those allowances proffered by SNET in its response to OCC-2. To facilitate full recovery of Telco costs from SAI, the Telco must immediately segregate all costs associated with the transfer and establish an implementation account wherein all the segregated costs from the date of approval of the proposed transfer will be recorded and subsequently audited by the Department for accuracy pursuant to provisions set forth in §272(c)(3) of the 1996 Federal Act.[16] The

[16] §§ 271 and 272 of the 1996 Federal Act address the affiliate relationships and affiliate transactions of the Bell Operating Companies. SNET is not, by definition, a Bell Operating Company and therefore not automatically subject to the terms and conditions set forth in these sections for their affiliate matters. However, the instructions set forth in those sections governing affiliate transactions are appropriately

Telco will not be permitted to incorporate any identified implementation costs from SAI that are associated with the proposed transfer into any subsequent petition for regulatory relief under terms set forth in the March 13, 1997 Decision in Docket No. 95-03-01. Therefore, the measures set forth in this Decision sufficiently safeguard against any unwarranted assignment of costs by SNET or unwanted assumptions of costs by the Telco.

The Department has also considered the question of customer information and has concluded that two issues warrant consideration: the question of information passed to SAI from the Telco in the course of realigning the retail activities of the Telco and SAI; and the question of information subsequently made available to a nonaffiliated CLEC by SAI when a change in service provider to another CLEC is initiated.

Regarding the first issue, SNET represented that information provided to SAI in conjunction with any proposed realignment of retail market activities will be limited to information integral to maintaining continuity with the customer service activities previously performed by the Telco. Some participants in this proceeding have suggested that, under the terms of the proposal, the Telco will be providing market information to SAI that it is not otherwise entitled to as a CLEC. SNET maintains that the subsequent scope of information provided to any CLEC, once the transfer is completed, is prescribed by both state and federal statutes governing interconnection and the development of competitive markets. Opponents of SNET's Proposal assert that SAI is not subject to the same duties and obligations prescribed for the Telco in §251 of the 1996 Federal Act and Conn. Gen. Stat. §16-247 and therefore, is not bound to fulfill commitments prescribed by statute for the Telco. According to such opponents, it is essential that the Department supplement those directives to protect against SAI refusing to provide any of the customer information sought by competitors once it assumes responsibility for the retail market. These critics argue that lack of this information will severely frustrate the development of competition in Connecticut and deny the public a fair opportunity to exercise choice in the future.

The Department is concerned that the flow of essential information for the efficient discharge of responsibilities by any organization, be it incumbent or new provider, not be negatively impacted by the actions of either the Telco or this Department. The transferal of certain customer information from the Telco to SAI coincident with the proposed realignment of retail responsibilities is essential to effective management of the retail function and in the best interests of the customer. The Department is compelled, however, to modify the proposed scope of information provided to SAI in the interests of both fairness to all interested participants and to the public. While the Department is sensitive to SNET's arguments that certain information regarding customers is essential to meet the expectations of the public for service, the Department is equally concerned that the segment of the Connecticut public which may opt for the services of another competitor not be unduly put at risk. If, as SNET contends, the information provided to SAI is essential to maintain the quality of service the public has come to expect, then the Department can only reasonably assume that

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applied in this proceeding

similar information is essential to meet the expectations of the public from another retail provider. Therefore, the Department deems it critical to the development of effective competition that: a) the universe of information provided to SAI by the Telco be limited to only those customers that will be, at the effective date of transfer, retail customers of SAI; b) the scope of information be limited by the Telco to that information deemed critical to ongoing management of the retail subscriber function; and c) corresponding information available from the Telco related to non-SAI retail customers be provided to the respective serving CLEC on the same terms and conditions prescribed for SAI. With those qualifications, the Department finds no reason to deny SAI use and eventual ownership of Telco customer information systems currently used in support of the Telco's retail activities.

With regard to the second information issue, i.e. information subsequently made available to a nonaffiliated CLEC by SAI when a change in service provider is initiated, the Department agrees with participants in this docket that state and federal statutory requirements imposed upon CLECs in matters of information disclosure are extremely limited. If SAI is separately granted a CPCN in Docket No. 97-03-17, it will be regarded and regulated as a CLEC unless the Department takes action in that proceeding to treat SAI differently.

After considering the requests made of it in this matter by the parties, the Department finds no basis for imposing any additional duties, obligations and/or requirements on SNET or its retail business unit beyond those currently stipulated by state and federal acts. The Department has not found the speculative arguments presented in this proceeding to be sufficiently compelling to warrant action under §16-247g(c)(5) of the Conn. Gen. Stat. and/or §254(f) of 1996 Federal Act. The Department remains of the opinion that the General Assembly and Congress envisioned a very limited role for the regulatory community in the competitive marketplace of the future. Both federal and state statutes are generally silent on issues related to CLEC-CLEC relations. The Department can only presume that both bodies assumed the open entry provisions contained within both statutes would sufficiently discipline the conduct of all CLECs such that additional involvement by the regulatory community was unnecessary. The Department finds no reason at this time to question the confidence in a competitive marketplace expressed by the Connecticut General Assembly or the Congress. Accordingly, the Department will confine its interests in this proceeding to ensuring information provided by the Telco to non-affiliated CLECs coincident with the reassignment of the retail functions from the Telco is consistent in content and uniform in quality with that provided to SAI. The Department will not involve itself in matters associated with CLEC-CLEC operations beyond restating its belief that concerns such as those presented here are better resolved in the constructs of an interconnection agreement.

The Department finds it interesting that little concern has been expressed by docket participants regarding the risk to the Connecticut public that might be attendant with approval and implementation of any transfer of the Telco customer base to SAI. The Department cannot ignore the potential risk to the public of a mass transfer to SAI and thus must modify SNET's proposal to ensure the protection of the public and the

continued development of competition. The Department is not certain whether such disregard constitutes an unintentional oversight on the part of the interested parties of an issue critical to the Department or whether the interested parties perceive no risk in such a wholesale transfer of customers. In either case, the Department is of the opinion that a degree of risk is presented by the proposal to both the public and to the future development of competition. Therefore, certain provisions must be made to mitigate any potential damage that might result from adoption of the Proposal. Specifically, the Department will deny the request of SNET to transfer en masse to SAI on January 1, 1998 the retail customers of the Telco. Instead, the Department will require that an impartial election process be established to permit business and residential subscribers adequate opportunity to express an informed choice of retail service providers. To ensure competitive equity at the time of the Telco's approved withdrawal from the retail market, the Department will deem all CLECs certified on or before October 31, 1997 to be eligible service providers entitled to automatic inclusion in the balloting process for their respective Modified Labor Market Areas (MLMAs). Any eligible CLEC wanting to be placed on the ballot must notify the Department in writing prior to December 31, 1997 of its intent to participate in the process. Participating CLECs must agree to provide to any prospective subscriber in their service MLMAs the service or services sought by the customer for a period of not less than one year. The Department assumes that SAI will accept any subscriber irrespective of the desirability given their stated willingness in the proposal to accept all of the Telco installed base on January 1, 1998.

On or before September 1, 1997, the Department will identify and contract with an independent firm to manage the election process on behalf of the public under authority granted the Department in Conn. Gen. Stat. §16-8. All costs associated with the election process and the assignment of default subscribers will be initally borne by SNET and then proportionately assigned and reimbursed by the participating CLECs in proportion to their respective local exchange market shares.

The Department proposes as a provisional plan to conduct balloting in all areas of the state commencing on March 1, 1998. The balloting will continue in three waves with subsequent voting materials provided on April 1, 1998 and May 1, 1998.[17] Each current Telco customer will be issued a ballot through the U.S. mail and will be given four weeks to make an affirmative selection and return the ballot by mail to the program administrator. Any subscriber who fails to elect a retail provider in the given timeframe will be randomly assigned by the administrator to a retail provider certified to provide local service in the subscriber's MLMA. The assignments to any particular provider, however, will be in direct proportion to the percentage of voting subscribers in the relevant MLMA that have affirmatively selected that provider. Each subscriber who fails to make an affirmative selection within the prescribed four week time period allowed by

[17] The Department has divided the state of Connecticut into three geographic areas each comprising a number of MLMAs for purposes of efficiently managing the election process. The Eastern Area will comprise the Northeast Connecticut, Southeast Connecticut and Hartford East MLMAs and receive materials on March 1, 1998. The Central Area will consist of the Hartford Central, Hartford West and New Haven MLMAs and receive materials on April 1, 1998. The West Area will contain the Litchfield, Waterbury, Danbury, Stamford and Bridgeport MLMAs and receive materials on May 1, 1998.

the process will be notified of the provider to which the subscriber has been assigned. Subscribers for whom a random assignment is made will then have two weeks to notify the Administrator of their intention to change providers. Subsequent to the close of the election process, subscribers requesting a change in provider may be subject to fees by the affected CLECs. To facilitate efficient and effective implementation of this process the Department proposes to hold a series of technical meetings with the interested parties at the conclusion of this proceeding to identify and address issues of concern that have emerged in this conduct of this proceeding. The Department has incorporated to this Decision as Attachment A a tentative framework for discussion and modification by the interested parties.

The Department envisions that the election process will be completed on or before July 1, 1998, and will be a relatively equitable process for SAI and all other CLECs. However, some additional instructions are necessary to encourage participation by the CLECs while at the same time limiting the potential for "gaming" the process. Accordingly, the Department will monitor the process for unwarranted abuse by firms seeking to accumulate a share of the market at the time of election and then reselling it or exchanging it with another CLEC. Any CLEC suspected of this act will be directed to show cause why its CPCN should not be revoked and a fine imposed under the provisions of Conn. Gen. Stat. §16-247g. Additionally, the Department will not permit outbound telemarketing activities to be initiated by or on behalf of a participating CLEC until 60 days prior to issuance of the ballots for each MLMA. No time or funding limits will be imposed on the use of print media, electronic media or direct response telemarketing activities. If the Department finds four violations of these telemarketing rules by a participating CLEC during the campaign period for that MLMA, the CLEC will be automatically removed from the non-select assignment pool. Finally, the Department will establish information reporting requirements, due on July 1, 2000, for all participating CLECs for use in a 2-year evaluation review of the program.

A related but independent matter of operational support and mechanized operational support systems was raised in this proceeding by a number of interested participants. Generally, the concern was expressed that both operational support and mechanized operational support systems afford SAI a substantive competitive advantage in a competitive market. Accordingly, a number of recommendations have been made in this proceeding intent upon reducing the level of unwarranted advantage that they might afford SAI in the future.

The Department has considered the matter in accord with statutory responsibilities that the Telco has under §16-247b(b) of the Conn. Gen. Stat. to provide nondiscriminatory access to its networks and facilities and §251(a)((2) of the 1996 Federal Act to ensure against installing features, functions or capabilities that do not comply with guidelines and standards for interconnectivity set forth in §256 of that act. In so doing, the Department has sought to understand whether the proposed support mechanisms constitute an intentional impediment by the Telco to the development of full and fair competition or simply a misfortune of time. After review of the evidence submitted in this proceeding, the Department is of the opinion that the Telco appears to be making a concerted effort to make available the operational support and mechanism

operational support systems deemed necessary by the CLECs for the future. However, some timeframes proposed by the prospective users appear relatively ambitious and present some potential for harm to the public if introduced without sufficient opportunity for testing and evaluation. Therefore, the Department is reluctant to require the Telco to truncate its development schedule and rush something into the market however unproven or unreliable it might be. Given that any failure or perceived failure of the operational support systems by the public will reflect upon the service quality of the respective serving CLEC, we are certain that most participants in this proceeding will agree with the Department's conclusion.

However, in affording the Telco additional time to bring online the mechanized operating support systems sought by the CLECs the Department remains concerned about the equity of information and capabilities afforded SAI by the use of the MSAP system . This system has the potential of providing SAI a significantly enhanced service fulfillment capability not available to other CLECs at the present time. In the opinion of the Department, until such time as the Telco has equivalent capability on line for use by nonaffiliated CLECs this mechanized operating support system affords SAI a tacit advantage in certain segments of the market. Therefore, as a means of ensuring competitive equity to all participants and to serve as an encouragement to the Telco to rededicate itself to the development and deployment of mechanized operational support systems for the other CLECs, the Department will require the Telco to identify to the Department and certify by December 31, 1997 that any features, information and capabilities afforded by the MSAP (and currently unavailable to other CLECs), are available for use by nonaffiliated CLECs. If SNET is unable to make such warranties to this Department the Telco will reduce the level of mechanized operational support proposed for SAI to a level that is equal to or less than that available to nonaffiliate CLECs. At such time that the Telco can attest to this Department that CLECs other than SAI have available to them comparable capabilities, the Department will release the Telco from this operational restriction. In so doing, the Department is of the opinion that the terms and conditions governing access to, and use of the network facilities of the Telco will be sufficiently nondiscriminatory at the time the election process is initiated to satisfy the requirements set forth in Section 251(c)(2)(D) of the Telecommunications Act of 1996.

By making these provisions in this Decision, the Department's actions are consistent with provisions of the state and federal statutes governing the development of competition and the protection of the public's interest in maintaining access to reliable and cost-effective telecommunications services. This Decision is also consistent with the intent of both the Connecticut General Assembly and the United States Congress to provide Connecticut end users with the greatest opportunity to exercise personal control over their telecommunications decisions.

4. Expansion of SAI Service Offerings

SNET has proposed to empower SAI to offer to all end users a variety of telecommunications and information services, including local services, intrastate services, interstate services and international calling and a number of enhanced